



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0560]

RIN 1625-AA00

Safety Zone; Lake Erie; Sandusky, OH

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters near Sandusky Bay in Sandusky, OH. This temporary safety zone is necessary to protect race participants, spectators and support vessels from marine traffic in the vicinity swim portion of the Ironman 70.3 Ohio Triathlon. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port Detroit or his designated representative.

DATES: This rule is effective from 4:30 a.m. through 10 a.m. on July 24, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0560 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Tracy Girard, Sector Detroit, Coast Guard; telephone (313) 475-7475, email Tracy.m.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security

FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The event sponsor notified the Coast Guard with insufficient time to accommodate the comment period. Thus, delaying the effective date of this rule to wait for the comment period to run would prevent the Captain of the Port (COTP) Detroit from keeping race participants, spectators, and support vessels safe from marine traffic in the vicinity swim portion of the Ironman 70.3 Ohio Triathlon. The safety zone must be established by July 24, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to ensure the safety of the participants and vessels during the Ironman 70.3 Ohio Triathlon on July 24, 2022.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Detroit has determined that potential hazards associated with the Ironman 70.3 Ohio Triathlon on July 24, 2022, will be a safety concern within 400 yards of the Dock Channel from the Jackson Street Pier to the Shelby

Street Boat Launch for 5.5 hours. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the event is taking place.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 4:30 a.m. through 10 a.m. on July 24, 2022. The safety zone will encompass all U.S. navigable waters of Lake Erie within a 400-yard radius of the dock channel in Sandusky Bay in Sandusky, OH, between the Jackson Street Pier and the Shelby Street Boat Launch. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the Ironman 70.3 Ohio Triathlon is taking place. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and time-of-day of the safety zone. This safety zone would impact a small designated area of Sandusky Bay for approximately 5.5 hours, during the morning when vessel traffic is

normally low. Vessel traffic will be able to transit after the time of the event. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 5.5 hours that will prohibit entry within a 400-yard radius of the Dock Channel in Sandusky Bay, between the Jackson Street Pier and the Shelby Street Boat Launch. It is categorically excluded from further review under paragraph L[60](a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T09-0560 to read as follows:

§ 165.T09-0560 Safety Zone; Lake Erie; Sandusky Bay, OH.

(a) Location. The following area is a temporary safety zone: all U.S. navigable waters of the Sandusky Bay within a within a 400-yard radius of the Dock Channel between 41°27'36.48" N, 082°42'54.84" W and 41°27'25.05" N, 082°43'26.64" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) Detroit or his designated representative.

(2) The safety zone described in paragraph (a) of this section is closed to all vessel traffic, except as may be permitted by the COTP Detroit or his designated representative.

(3) The "designated representative" of the COTP Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The designated representative of the COTP Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Detroit or his designated representative.

(c) Enforcement period. This section will be enforced from 4:30 a.m. through 10 a.m. on July 24, 2022. The Captain of the Port Detroit or a designated representative may suspend enforcement of the safety zone at any time.

Dated: June 30, 2022.

Brad W. Kelly,
Captain, U.S. Coast Guard,
Captain of the Port Detroit.

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